

BLOOMFIELD LAW GROUP, INC.

A Professional Corporation

Neil Jon Bloomfield, Esq. (State Bar No. 052235)

901 E Street, Suite 100

San Rafael, CA 94901

Telephone: (415) 454-2294

Facsimile: (415) 457-5348

Attorney for Plaintiff Nader Shaterian

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

NADER SHATERIAN,

Plaintiff,

vs.

WELLS FARGO BANK, NATIONAL
ASSOCIATION; CAL-WESTERN
RECONVEYANCE CORPORATION;
and DOES 1-50, Inclusive

Defendants.

CASE NO. C11-00920-SC

**DECLARATION OF PLAINTIFF
NADER SHATERIAN IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION RESTRAINING
THREATENED AND SCHEDULED
FORECLOSURE SALE**

Date: May 13, 2011

Time: 10:00 a.m.

Courtroom 1

Nader Shaterian declares and says:

1. I am the Plaintiff in this action.

2. I am the owner of 511 Browning Court, Mill Valley, CA, Assessor's
Parcel Number: **049-093-21** [hereinafter, "my property"].

3. Attached hereto as **Exhibit A** and **Exhibit B**, respectively, are true and
correct copies of the "Notice of Default" and "Notice of Trustee's Sale" for my
property. The sale was originally set for February 1, 2011. My attorney was able
to get a short postponement, but the sale has been re-scheduled, and unless

1 enjoined, my home will be sold out from under me on **Friday, May 20, 2011, at**
2 **3:00 p.m.**

3 4. The facts in this case are set forth in my Verified Complaint, filed in the
4 State Court action, which was part of the record removed to this Court, (and
5 attached as Exhibit A to Defendant Wells Fargo's Notice of Removal). All of the
6 facts in that Complaint are true and correct, as I've previously sworn thereto, and I
7 incorporate that document and all the statements in it herein by this reference as
8 though set forth at length herein.

9 5. The company purportedly holding the sale, which is defendant Cal-
10 Western, was never appointed by or approved by me. In fact, they seem to have
11 appointed themselves. While World Savings may have had a right to change
12 trustees, the present trustee change was done by the trustee themselves,
13 purporting to be agent for World, Wachovia and Wells. Nothing is recorded that I
14 am aware of authorizing this company to act which is actually signed by Wells, or
15 Wachovia, or World, and thus I do not believe they are a proper trustee. But if
16 allowed to act, they will cloud and take away title to my home. A copy of the
17 purported Substitution of Trustee, signed by Cal-Western only and purporting to
18 appoint Cal-Western as a new trustee, is attached hereto as **Exhibit C**. The only
19 trustee of record prior to that as far as I know was the original trustee, who has
20 not issued a notice of default or a notice of sale to the best of my knowledge.

21 6. The loan to me is a completely confusing loan that was never explained
22 adequately to me prior to the loan funding and recording. I now know it is a
23 predatory loan, known as a "Pick a Payment" loan, but I did not know it at the time
24 I took it out. I could never qualify for the true payments at the true interest rate,
25 so that I was put in a trap that I could not get out of by this loan. I was "qualified"
26 based on a misrepresented interest rate and "introductory" payments that were not
27 my true payments and only covered a portion of what was actually due.

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1 7. Apparently two large California lawsuits have recently established that
2 there are numerous victims like me, and procedures are just now being set up to
3 rectify these wrongs. However, I have not yet been offered these benefits, and
4 some of them do not take effect for another several months. Two articles showing
5 that then Attorney General Brown obtained \$2 billion in benefits for people like me
6 in new loans to replace the faulty ones are attached hereto as **Exhibit D**. The
7 second lawsuit is a pending class action settlement in which \$50,000,000 is
8 funded for one group of victims and other groups, like me, are to be offered new
9 loans on a very complicated “waterfall” basis. (I have highlighted two important
10 provisions of that settlement at pages 4 and 5.) Although I have been asking for a
11 loan modification for years, no representative of defendants has offered me the
12 settlement benefits yet. I am asking the Court to stay my foreclosure sale until I
13 can demonstrate that I have suffered the same harm, and recover the benefits,
14 including a new loan, that I can qualify for, either through the pending two
15 settlements or otherwise by proving my damages in this case.

16 8. Back in 2007 when I was looking for this loan, I contacted Diablo
17 Funding Group (“Diablo”) to re-finance my home. This was primarily in order to
18 draw out equity so that I could finish needed improvements to my property, and
19 pay for the improvements already in progress. Since purchasing the property four
20 years earlier, I had discovered it was sliding down its hill, and I needed to build
21 two 14’ by 100’ retaining walls, at a cost of about \$300,000. I had started the
22 construction with my own funds, but needed the new loan to finish and to
23 replenish my capital from the construction outlays.

24 9. I worked with Juanita Apodaca from Diablo to get new financing. She
25 sold me on a World Savings Bank, FSB, (“World”) loan, and took care of all the
26 documentation for the loan – working hand-in-hand with World. I completed a
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1 Loan Application, and provided her copies of all my income and expense
2 information including W-2's and tax returns.

3 10. Ms. Apodaca represented to me that the loan I was applying for was a
4 one-year fixed rate – of approximately 6% - but that after the first year it would
5 become adjustable, and could adjust downward to the then-current interest rate.
6 This was very attractive to me, and sold me on the loan. I knew that the first year
7 might be a stretch, at 6%, but interest rates were going down and I anticipated my
8 payment descending over time. However, my payments did not go down, they went
9 up, and my interest rate was not 6% as represented. I was deceived.

10 11. When it was time to sign the closing documents, they were presented to
11 me with significant items blank. My ex-wife had to sign certain documents as well
12 and her documents had significant blanks as well. Ms. Apodaca told me she was
13 still working out the details with World, and continued to represent to me the
14 favorable loans terms of a one-year fixed loan at around 6% interest.

15 12. Many of the loan documents had to be notarized. I discovered later that
16 they were notarized “after-the-fact” by a Yolando Apodaca, who must have been a
17 relative of Juanita.

18 13. Misrepresenting the true terms of the loan, and concealing the truth
19 from me by having me sign the documents in blank were not the only frauds that
20 Diablo's agent, Ms. Apodaca, committed. After the closing I obtained a copy of the
21 Final Settlement Statement which showed a \$16,136.22 payment through escrow
22 to a J Construction for apparent “home improvements.” The invoice was a fraud,
23 created by Ms. Apodaca to divert money to herself or a friend or relative, and there
24 was never any such work done. I was not the only who was victimized by Ms.
25 Apodaca, and on information and belief it is my understanding that Ms. Apodaca
26 was later convicted of a crime for certain frauds related to her “loan dealings.”

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1 14. Diablo and Ms. Apodaca were in cahoots with World, who was busy
2 selling negative amortization loans to naïve homeowners like myself. I wasn't
3 familiar with these types of loans then, but have now come to learn a lot about
4 them.

5 15. I learned after the fact that I had signed up for an 8% interest rate loan
6 – but still thought that it was a one-year fixed. After the year was up, I contacted
7 Wachovia (who then owned World), and asked about adjusting my interest rate
8 downward – as it was considerably higher than the then current rates. I learned
9 then that my loan was a three-year fixed, not a one-year. The nature of the loan
10 had never been properly explained to me.

11 16. I also learned later that my loan was a negative amortization loan – and
12 what is known as a “Pick-A-Payment” loan – and what that means: that the low
13 loan payments I was offered for the first three years didn't even cover interest and
14 that my principal amount was increasing every month.

15 17. I have tried many times to adjust my interest rate with Wachovia (now
16 owned by Wells Fargo), but have never had any success because I could never
17 qualify for the excessively higher payments - this was the fraud that was
18 perpetrated on me. I was made a loan I could not qualify for, then when rates went
19 down, denied modification because I could not qualify for the loan. Only with the
20 fake gimmick of using the low teaser rate could I qualify.

21 18. In June of 2010 I contacted Wells Fargo directly, on my own, through a
22 local bank agent – John Kearney, a Wells Fargo Bank “Loan Adjustment
23 Specialist,” seeking a loan modification. Mr. Kearney submitted a loan
24 modification application to Wachovia, but I never heard back from Wells or
25 Wachovia. Mr. Kearney later told me I had to contact Wachovia directly, on my
26 own, and gave me an (800) number. It was the same number I had called
27 previously seeking a rate adjustment and was denied.

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1 19. I dealt directly with Wachovia then, meeting with a Wachovia agent in
2 August/September of 2010. I faxed in an application, which was denied in
3 October of 2010. I believe the denial was in bad faith, and that under the criteria
4 represented to me I should have qualified for a modification of my loan.

5 20. I submitted a second application in November of 2010, and it was
6 denied in December. Again, the denial was unwarranted.

7 21. Wells Fargo Bank states in a declaration they attached to the Notice of
8 Default they recorded against my property, in March of 2010, that they “contacted
9 the borrower” (me) as required by law to offer me alternatives to foreclosure. This
10 is absolutely untrue. Like I said above, my first contact with Wells was in June, of
11 2010 when I contacted them. And that contact did not contain the statutory items
12 they were obligated to disclose to me. The submittal of this false statement in
13 support of their notice of default is sufficient in and of itself to invalidate the
14 proceedings. Wells Fargo had not taken over the loan back when Wells claims to
15 have notified me and spoken to me.

16 22. I sincerely think that Wells Fargo (and Wachovia) never had any
17 intention of granting me a modification. I was denied an interest rate adjustment
18 several times, and a loan modification twice, and both times for different reasons: I
19 didn’t make enough money, I had too much debt, etc. But neither of these
20 modifications was processed in the special way (borrower finally recognizing the
21 “Pick a Payment” wrongs) that will be available now under the Attorney General
22 Settlement and the Class Action settlement, and should be easy for Wells to now
23 apply to my situation. Additionally, my income has recently improved somewhat,
24 so it is now possible I will qualify if Wells Fargo does not take my home from me
25 before I have time to do so.

26 23. The California Attorney General and some class action attorneys have
27 brought Wells Fargo partially to justice, but the justice has not yet trickled down to
28 me. No one has evaluated me under the two settlements for a loan modification.

1 That process now needs to start, and it has not yet had a chance to start. The
2 California Attorney General settlement only occurred in late December 2010. The
3 press release indicates \$2 billion dollars in new loans will be made to persons like
4 me. I do not yet have a notification of it from the Attorney General, and thus have
5 not yet had a loan modification process started with the special features under
6 that settlement.

7 24. The class action case, M:09CV-2015 in the Northern District of
8 California, is also relevant and I am asking the Court to take judicial notice of it.
9 That settlement does not protect people like me who have a threatened sale, it only
10 gives them possibly some minimal compensation after the fact. For that reason
11 primarily, and for several other reasons, I have opted out of the settlement,
12 although the administrator of the settlement may be contesting my opt out, so the
13 status is not 100% clear. That settlement provides a good guideline for how Wells
14 Fargo can, should, and hopefully will apply a loan modification for me, which could
15 be a good basis with some additional provisions and injunctive relief until it is
16 completed, for a settlement of my claim. The special set of "settlement"
17 representatives to apply the special benefit standards of that settlement will
18 already be in place and I believe they could be easily used to facilitate settlement of
19 this case. However, if the sale is allowed to occur on May 20th when Wells has
20 scheduled it and threatens to hold it, then I will not be eligible for the home saving
21 features of loan modification plans which I believe I am eligible for under both
22 settlements, or either, nor from the equivalent which I should be able to attain as
23 equitable relief in this lawsuit, since my home will, but for injunctive relief, soon no
24 longer belong to me. I love this home and it is of unique value to me.

25 25. One party has objected to the Class Action settlement and pointed out
26 that although it is long and wordy, it is not easy to find where persons who are
27 about to be foreclosed against get any help or assistance at all in not going over the
28 cliff while the settlement is pending. Because of that objection, settlement approval

1 in the Class Action may be postponed, and it is likely there will be or may be a new
2 opt in/opt out option emanating from how the settlement is revised to suit the
3 objection. It is and remains my preference to resolve my differences directly with
4 the defendants and to get my relief and my damages in State Court, but it is
5 possible that developments in the Class Action could cause that choice to be re-
6 determined at some later time.

7 26. The World loan was not only a financial hardship on me for years while
8 I was paying it, but my dealings with Wells Fargo and Wachovia in the past couple
9 of years have caused me great emotional distress. The damage has been
10 significant to my credit, which is now ruined, and I now have no option of “other
11 financing” to save my home.

12 27. It is my belief that the loan I was sold was designed to fail – and it did.
13 Or at the least – it was designed to make money for the lender – which it did –
14 without regard to the victim borrower.

15 28. It also seems evident to me that Wells Fargo is trying to conclude the
16 foreclosure of my property prior to the finalization of either the class action
17 settlement or the State Attorney General action of April 2011 that I may qualify for
18 if I still own my home then. By allowing Wells Fargo to go forward with the sale, I
19 would be effectively cut out of the potential to obtain relief for what seems to me, to
20 the Class action Plaintiffs in the “Pick a Payment” case, and to the California State
21 Attorney General to be a proper grievance in need to being redressed and
22 addressed. I want the benefits of the California Attorney general Assurance, a copy
23 of which is attached hereto, but they have never been offered to me. Wells has not
24 to this date told me that they are willing to process an application for me under the
25 new standards they have evolved, and I believe I may qualify under the new
26 standards with principal reductions.

27 29. I understand that Wells Fargo is settling or has settled with
28 homeowners like myself in class actions and Attorney General actions in at least

1 nine states, including California. A Copy of the California Settlement is attached to
2 this declaration as **Exhibit E**. At paragraph II E, recognizing the depth of the wrong
3 that has been done to California consumers by World and Wachovia, and Wells
4 obligations on taking these items over, Wells signed with California's Attorney
5 General an Assurance that I, and other victims like me, would be offered certain
6 benefits. At page 2, paragraph II e of that Assurance, it says that Wells will offer to
7 me an affordable loan modification that will include principal forgiveness. This has
8 not yet occurred. It also says at page 13 paragraph VI that Wells will send to me
9 two letters telling me how to proceed to get my loan modification. I have never
10 received these letters. (In fact, my first communication with "Wells" was the June
11 2010 loan modification attempt in which I was referred to Wachovia – with Wells
12 telling me there was nothing they could (or would) do for me.

13 30. I wish to have such a modification, but have not yet been able to start
14 the process under these new and hopeful settlement guidelines. As I understand
15 it, the California Attorney General settlement does not require me to participate in
16 the Class Action settlement. There are significant problems with the Class Action
17 settlement. The California Attorney general settlement does not require me to
18 release any claims. I believe this framework is a good one to maximize the chance
19 this matter can be settled on a basis that works for me and for Wells Fargo.
20 However, if Wells Fargo is permitted to roll over me, a simple consumer, with their
21 huge in-place machinery, and foreclose me out, I will have suffered irreparable
22 harm and there will be no way to fix it.

23 31. As soon I receive the State Attorney General settlement letter, which I
24 have not yet received (I had to research this web site myself) I will start the process
25 of seeing if Wells Fargo will do for me what they promised the California attorney
26 General that they would do in the Assurance document attached. I believe that if
27 the sale is postponed while I'm pursuing my action against Wells Fargo, that I will
28 prevail like other "Pick-A-Payment" loan plaintiffs and with the help of the

1 California Attorney General program, will get a principal reduction and a much
2 fairer loan. If not, then I expect at trial I will be awarded sufficiently large damages
3 that they will fund my claim for recession and/or lower the balance enough that I
4 can obtain an affordable loan to repay the then reduced balance, and thus I will
5 be able to keep my home. I am asking that this court allow me that opportunity. I
6 am gainfully employed, have reasonable income, and but for the predatory
7 practices complained of by the State Attorney General and which he concluded
8 violated portions of California Business and Professions Code sections 17200 and
9 17500 (see paragraph B of the stipulation, Exhibit E) I would not need this Courts
10 help with injunctive relief. But because of those violations and the others set forth
11 in my complaint, I do need the Courts help to avoid being crushed until I get time
12 to get my loan modification and until I get time to prove my offsetting damages
13 against the loan balance.

14 32. I make this declaration upon facts known personally to me and if called
15 as a witness could and would testify competently to the same, except those on
16 information and belief, and as to those I believe them to be true.

17 33. If the present foreclosure sale in this case allowed to go forward, there
18 will be irreparable harm to me, and I will lose the opportunity to pursue my case in
19 this action for equitable relief and to prevent the wrongful scheduled foreclosure,
20 and also lose the benefits I might get as part of the settlement in the recent
21 Attorney General settlement, and lose a path to benefits equivalent to those in the
22 pending "Pick and Pay" Class action settlement.

23 34. If Wells and I do not agree to an enhanced modification after a
24 streamlined modification review under the Attorney General program, which they
25 have not yet offered to me, then I want to rescind the loan and get back all the
26 interest they have wrongfully taken. I expect my rescission damages may equal
27 the loan amount and I may be entitled to the house free and clear. I would rather

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1 take the middle ground of a fair loan modification and principal reduction, as
2 promised under the Attorney General program that does not require me to release
3 Wells as a precondition of seeing if they will do the enhanced modification.

4 I declare under penalty of perjury that the foregoing is true and correct.
5 Executed at New York, New York this 8th day of April, 2011. If called as a witness, I
6 could competently testify to the foregoing, except those matters on information and
7 belief, and as to them, I believe them to be true.

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9 /s/ Nader Shaterian

10 _____
11 Nader Shaterian
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CERTIFICATE OF SERVICE

I, the undersigned, declare that I am over the age of eighteen years and am not a party to the within-entitled action; my business address is 901 E Street, Suite 100, San Rafael, CA 94901

On the date below, the attached document(s) entitled:

**DECLARATION OF PLAINTIFF NADER SHATERIAN IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION RESTRAINING THREATENED
AND SCHEDULED FORECLOSURE SALE**

was served on all interested parties in said matter addressed as follows:

Robin Prema Wright, Esq.
Nicole K. Neff, Esq.
WRIGHT, FINLAY & ZAK, LLP
4665 MacArthur Court, Suite 280
Newport Beach, CA 92660

Christopher A. Carr
Viddell Lee Heard
ANGLIN, FLEWELLING, RASMUSSEN,
CAMPBELL & TRYTTEN LLP
199 S. Los Robles Ave., Suite 600
Pasadena, CA 91101-2459

☒ **(BY MAIL)** by placing a true copy thereof enclosed in a sealed envelope or package, addressed to the party(ies) as stated above or on the attached service list. I am readily familiar with the firm's business practice for collection and processing of envelopes and packages for mailing with the U.S. Postal Service. Under the firm's practice, mail is deposited in the ordinary course of business with the United States Postal Service at San Rafael, California, that same day, with postage thereon fully prepaid. I am aware that upon motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after the date of deposit for mailing.

☒ **(Federal)** I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 8, 2011

/s/ Susan Cofano
Susan Cofano
Legal Assistant